

Town of Horicon

ZONING BOARD OF APPEALS

Minutes of June 22, 2010

Members Present: Gary Frenz, Priscilla Remington, Curt Castner, Dan Smith, Alternates: Jim Steen, Thad Smith

Members Absent: Cheryl Erickson

Others Present: Counsel to Boards Mike Hill, Zoning Administrator Gary McMeekin

Guests Present: Bill McGhie, Trevor Labarge, Victoria Paull, Deanne Paul, Dan Schweigard, Tommy Johansen, Brian Johnson, Karen Burke, Bob Fradkin, Ester Berstein.

Pledge

Regular Meeting called to order by Gary Frenz. Dan Smith made a motion to approve the minutes as corrected 2nd by Curt Castner. All Ayes.

NEW BUSINESS:

File #2010-10AV Tax Map # 37.-1-26.2 Brian and Tracy Johnson seeking variances to subdivide parcel located at 136 Johnson Road in the LC-10 acre zone. Brian Johnson stated that the home will be on the 10.58 acre parcel and the barn will be on the 18.19 acre lot, the family is looking to downsize, sell the house and re-build on the barn lot in the future, the driveway would be used as the dividing line of the parcels. After reviewing the proposed subdivision map Dan Smith made a motion to deem the application complete and schedule a public hearing, 2nd by Curt Castner. All Ayes.

File #2010-23 AV Tax Map 70.-2-16 Hayes, Charles seeking variances for a 2 lot subdivision located at 63 Valentine Pond Rd in the RRD-10 acre zone. Priscilla Remington asked how this proposal was different than the last. Gary Frenz stated that the first proposal the zoning boundaries were incorrect and due to the fact that this does not meet the gift parcel criteria and has the intention to build a home on the larger parcel. Dan Smith stated that the owner has revised the lot sizes. Discussion ensued regarding the lot sizes, the need for the applicant to be present and any feasible alternatives. Dan Smith made a motion to table this application requesting the Zoning Administrator contact the applicant and request he be present at the next meeting 2nd by Priscilla Remington. All Ayes.

PUBLIC HEARING:

File # 2010-16 AV Tax Map 70.-2-13.111 John Fosatti/Independent Towers seeking two (2) 25' height variances to build two (2) 65' cell towers on parcel located on East Schroon River Road. Dan Schweigard explained the proposal submitting the information requested by the Board regarding an alternative location and the survey of the road location explaining that the MOBIL sign would not be suitable due to the height for cell coverage, the structural integrity and the owner was not agreeable to the terms of the contract. Dan Schweigard continued to state that a tree survey was done, there are protective covenants attached to the deed, the colors of the pole and branches will be in keeping with the surrounding area, there are three proposed sites being developed in the area, the Town of Bolton has approved a cell tower and the initial presentation has been made to the the Town of Chester. Discussion ensued regarding the road. Dan Schweigard stated that the grade is not over 7-8% and will only be plowed if needed. Mike Hill stated that this is a Class A project and SEQRA will be completed by the APA. Being no further comments or questions, Priscilla Remington made a motion to close the public hearing, 2nd by Dan Smith. All Ayes.

UNFINISHED BUSINESS:

File # 2010-16 AV Tax Map 70.-2-13.111 John Fosatti/Independent Towers seeking two (2) 25' height variances to build two (2) 65' cell towers on parcel located on East Schroon River Road. Gary Frenz stated that this is an application for height variances, the roads and storm-water will be a Planning Board issue. Dan Smith stated that he would like to first cover the minimum variance's necessary. Gary Frenz stated that only one tower is needed at this time.

Mike Hill asked the applicant if he would be willing to amend his application to one tower. Dan Schweigard stated that he would amend his application to one tower. The board reviewed the criteria and were in agreement that the feasible alternatives have been reviewed and discussed as the only other feasible site in the area, the MOBIL sign, would not be suitable due to the height of the structure and structural integrity and the owner was not in agreement with the terms. The board agreed that there would be no undesirable change to the character of the neighborhood or change to nearby properties as this is virtually unnoticeable due to the remote location, not next to someone home and several feet from adjoining property lines, there will be a two hundred foot tree buffer and will be camouflaged with tree colors and branches. Dan Smith added that this is a desirable change due to the increased services to the community. The board agreed that the request is substantial but mitigated due to the total cubic footage and this is not a building or a solid structure. The board agreed that there will be minimal adverse physical or environmental effects on the property as the people on East Schroon River Road will not be able to see the tower, the project recognized the white tail deer wintering area, and a vegetation agreement written into the deed protects the surrounding area. The board agreed that the is not self created as wireless companies are obligated to provide coverage. The board agreed that this is the minimum variance necessary with the amendment of the application for one cell tower. Being the board agreed to the criteria stated, Gary Frenz made a motion to approve the 25' height variance for one tower as stated in the discussion above, 2nd by Jim Steen. All Ayes.

PUBLIC HEARING:

File # 2010-20A Tax Map # 89.5-1-11 Dan and Deanne Paull seeking an appeal of the Zoning Administrator's determination regarding the definition of Farm - Full or Part Time. Deanne Paull submitted information to the board she felt would prove that the goats are pets. Robert Fradkin stated that he has lived in Brant Lake for 22 years and lived across the road from Mike Harpp for years and there was no noise or odor from Mr Harpp's animals but can attest that the Paull's animal noise is intolerable and could not live next door to them as he visited with the Burka's and could not carry on a conversation. Gary McMeekin stated that the Zoning Ordinance does not specify pets and this is a quality of life issue that should be taken up by the Town Board, this is a density issue. Karen Burka read the definition of a Farm and submitted information to the board regarding farm animals vs pets, stating that the Paull's have been presented options to alleviate the situation and would not have a problem with the goats if they were quieter and there was no odor. Ester Bernstein stated that the Paull's do not have more than an acre of land. Gary McMeekin restated that this is a density issue regarding the interpretation that these animals are livestock. Robert Fradkin stated that this is a major issue, a quality of life issue and could effect property values and there are feasible alternatives. Being no further comments or questions Priscilla Remington made a motion to close the public hearing, 2nd by Dan Smith. All Ayes.

UNFINISHED BUSINESS:

File # 2010-20A Tax Map # 89.5-1-11 Dan and Deanne Paull seeking an appeal of the Zoning Administrator's determination regarding the definition of Farm - Full or Part Time. Jim Steen stated that goats, horse, lambs are livestock the zoning code does not define pets, just because you call it a pet does not mean it is a pet. Curt Castner stated that his is no disagreeing with Gary McMeekin. Lengthy discussion ensued regarding dogs and cats and domestic animals. Priscilla Remington stated that this board is dealing with Gary McMeekin's interpretation. Jim Steen stated that the definition of a Farm does not say ""unless they are pets", there is no inclusion of pets simple". Jim Steen continued on to state that the R2 and LC zones allow farms and if a parcel is not in excess of an acre livestock is not allowed. After a brief discussion Priscilla Remington made a motion to uphold the Zoning Administrator's determination as to the definition of a Farm , 2nd by Jim Steen.

The board was polled Priscilla Remington Aye Jim Steen Aye Dan Smith Nay Curt Castner Nay Gary Frenz Aye. The motion passed by majority vote.

PUBLIC HEARING:

File # 2010-10 AV Tax map # 55.10-1-22 Golden Pond LLC/Farrell seeking a 45' shoreline setback variance to build a new home on parcel located at 686 Palisades Road. The applicant has stated that they are revising their plans and will submit the new plan for the next meeting. Dan Smith made a motion to table this application until the next meeting, 2nd by Priscilla Remington. All Ayes.

PUBLIC HEARING:

File #2009-35AV Tax Map 89.5-1-11 Dan and Deanne Paull seeking a .20 acre density variance to be defined as a Farm. Full or Part Time under the definition section of the Zoning Code. Gary Frenz asked if anyone had any comments or questions. Trevor LaBarge stated that he is a neighbor and does not understand the changes as Mike

Harpp had a quarter of an acre with a number of animals and now new people move into the area and there are changes made. Discussion between the board and the applicants ensued regarding the number of goats on the property, noise, feeding times and any feasible alternatives as to relocating the goats to another parcel. Karen Burka stated that the worse time for noise was 7-9am and again from 3-7pm and all day on Sunday. Karen Burka continued to state that she made a recording and the noise if not the exception but the rule, there are options for the goats to be placed elsewhere. Priscilla Remington asked if Brad Joy's property was a solution. Deanne Paull stated that the fence is the issue there. Karen Burka stated that there is no space for the goats, the property is narrow in the back and the goats are located close to the property line and if the goats were happier they would not make as much noise, this is a quality of life issue as she can not sit on her deck and the zoning law should be upheld. Gary Frenz asked the applicant of the amount of room the goats had to roam and the food that is provided. Trevor LaBarge stated the goats live in a 20' x 20' area and are 35 to 40 lbs each, have hay to eat all day long. Karen Burka stated this board should base their decision on the facts, not emotion. Mike Hill stated that this board is reviewing a .20 acre variance request. Jim Steen stated that a 20' x 20' area is 400 square feet and reviewed the ordinance in Chestertown and the standard is 4,500 square feet of pasture land and this parcel is one hundred times smaller. Gary McMeekin stated this is about land use not personal use as this goes with the land forever. Jim Steen stated that this board's decisions have repercussions and they need to apply the same standard for everyone. Deanne Paull stated that they are not lacking much land to comply. Dan Smith made a motion to close the public hearing, 2nd by Gary Frenz. All Ayes.

UNFINISHED BUSINESS:

File #2009-35AV Tax Map 89.5-1-11 Dan and Deanne Paull seeking a .20 acre density variance to be defined as a Farm. Full or Part Time under the definition section of the Zoning Code. Jim Steen stated that this is a difficult decision. The board reviewed the criteria:

#1: Whether the benefit can be achieved by other means feasible to applicant; Priscilla Remington stated that they could put the goats someplace else but there is fence issue due to expense and setback requirements. After a lengthy discussion the board was split on their determination of criteria #1
#2: Undesirable change in the neighborhood character or to nearby properties; Jim Steen and Dan Smith agreed that this is a detriment to nearby properties. Gary Frenz stated that the neighborhood is more residential than farm.
#3: Whether request is substantial: The entire board agreed that this is not a substantial request.
#4: Whether request will have adverse physical or environmental effects; Gary Frenz and Priscilla Remington stated that this would have an adverse environmental effect due to the animal waste and effect on the wetlands when it rains, there is a visual, odor and noise detriment. Dan Smith and Jim Steen agreed.
#5: Whether alleged difficulty is self-created: Dan Smith stated that they were operating under the assumption that they owned one acre of land and did not know about the farming law and a minor land measurement changed the acreage. Discussion ensued regarding possible conditions and the Balancing facts as criteria #4 weighs more heavily as it takes the neighbors into consideration. Jim Steen stated that a fence will not stop the noise. Gary Frenz stated that there are two complaints regarding this issue. Jim Steen stated that the applicants have filed for farm use and the neighbors pre-date the goats and have a right to enjoy their property, this should not be at the expense of the neighbors and this board sets a precedence with their decisions. Priscilla Remington made a motion to table this decision until next month, 2nd by Dan Smith. All Ayes.

BOARD PRIVILEGE: Gary Frenz stated that Alice Altieri as filed an appeal in the variance denial matter.

There being no further business before the board, Chair Gary Frenz adjourned the meeting at 10:30 PM

Respectfully Submitted.
Christine Smith-Hayes, Secretary